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‘Google Abusing its Dominant Position’: The Competition Commission of India

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ABSTRACT

The first step to success is competition. As long as it is done in a legal manner, competition is regarded as a healthy practice for fostering chances and acting as a motivator in any profession. One such law is the ‘The Competition Act, 2002’, which aims to eliminate anti-competitive behaviour by prohibiting anti-competitive agreements and mistreating market domination situations. The Competition Commission of India (Commission) has found that Google has perpetuated its dominant position in the online search market resulting in denial of market access for competing search apps in contravention of different sections of the Competition Act. The Commission opined that the markets should be allowed to compete on merits and the onus is on the dominant players (in the present case, Google) that its conduct does not impinge this competition on merits.

Keywords: *The Competition Act, Google, The Competition Act, dominant position.*

I. INTRODUCTION

There is a growing recognition that a flexible, dynamic and competitive private sector is essential to promote sustainable economic development. Promotion of competition offers more high-quality products at lower prices. Competition also promotes greater accountability and transparency and reduces corruption and lobbying. Competition as an efficient system for market operations stimulates entrepreneurship and expands choices. Economic theory assumes that in a competitive market price and quantity are balanced to a level that produces an effective outcome. Competition laws and policies do not kill competition, but promote competition by punishing anti-competitive behaviours such as anti-competitive agreements and abuse of power. Competition in any field is considered a healthy practice that creates opportunities and motivates if conducted legally. Perfect competition is where all firms sell a homogeneous and fully sharable product, all producers and consumers accept prices, all firms have a relatively small market share, and buyers and sellers It can be defined as an informed market outcome.

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One such law is the 'The Competition Act, 2002', which aims to eliminate anti-competitive behaviour by prohibiting anti-competitive agreements and mistreating market domination situations. The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007. In accordance with the provisions of the Amendment Act, the Competition Commission of India and the Competition Appellate Tribunal have been established. The provisions of the Competition Act relating to anti-competitive agreements and abuse of dominant position were notified on May 20, 2009.

(A) The Competition Act, 2002

The Competition Law was passed in 2002² and came into force on January 13, 2003. The aim of the act is to provide for establishment of a Commission (i.e. Competition Commission of India) to prevent anticompetitive practices, to promote and sustain competition in the market, to protect the consumers and to ensure freedom of trade carried on by the other participants of the market.

The Act regulates three Anticompetitive practices namely Anticompetitive agreements, Abuse of Dominant Position and Mergers & Acquisitions (Combinations). The main criteria used for the regulation of anticompetitive practices are that such practices should not cause an appreciable adverse effect on competition within India.

The following are some of the main features of the Competition Act:

Anti-competitive agreements: The competition law forbids any agreement involving two or more firms or individuals to maintain market competition and serve the public interest in India. Anti-competitive agreements are agreements among companies in a commercial transaction that have the ability to weaken competition in a specific market or enrich one specific group at the cost of the others. Such anti-competitive contracts are prohibited by the Competition Act, 2002.

Dominance-abuse prevention: Any firm that exploits its dominating position will be penalised. When an individual or a firm is in a stronger position, which allows them to act freely irrespective of competitive pressures in the market sector, they are said to be in a dominant position. They also have a positive influence on their rivals, customers, or the current market situation. A dominant position refers to a company's power in a particular market in India that allows it to function freely irrespective of business pressures. To establish an abuse of dominant position, a corporation must first have a dominant position in terms of a specific product and

² <https://www.cci.gov.in/legal-framework/act>

the geographic market for that product. Section 4 of the Competition Act, 2002, focuses on the prohibition of such misuse. It implies that no firm or organisation should use its dominating position to its benefit.

Anti-cartels: Any agreement between businesses or individuals that harms competition is a civil offence. Section 3 of the Competition Act, 2002 makes it illegal to enter into any agreement pertaining to the manufacturing, sale, transport, warehousing, purchasing, or management of goods and services that has or is likely to have an adverse effect on the market in India. Section 3(2) further specifies that any agreement entered into in contravention of this provision is null and void.

Mergers and acquisitions: The Commission will only approve mergers and acquisitions if they do not undermine market competition. The Competition Act contains some rules and regulations regarding combinations to ensure that such mergers do not harm competition in the market. Section 6(1) prevents the establishment of combinations that seem to have an appreciable adverse effect on competition in the pertinent market in the country, and thus further says that certain combinations should be regarded as void. No organisation can enter into any merger that is likely to provoke an appreciable adverse effect on competition.

Informative nature of this act: In order to provide clarity and avoid misunderstandings between companies or people, a business must notify CCI of any interactions that are likely to harm market competition prior to adopting such action or engaging in such an agreement.

II. MR. UMAR JAVEED AND OTHERS VS GOOGLE LLC AND GOOGLE INDIA PRIVATE LIMITED

(A) Case History:

A case has been filed in COMPETITION COMMISSION OF INDIA by Mr. Umar Javeed, Ms. Sukarma Thapar and Mr. Aaqib Javeed (the, 'Informants') under Section 19(1)(a) of the Competition Act, 2002 (the, 'Act') against Google LLC and Google India Private Limited (collectively, 'Opposite Parties'/ 'Google'), alleging inter alia abuse of dominant position by Google³ in the mobile operating system related markets in contravention of the provisions of Section 4 of the Act. The Informants are stated to be consumers of the Android based smart phones.

(B) Case Facts:

Google LLC, formerly Google Inc., is stated to be a Delaware limited liability company and

³ Section 4 (2) (c) of The Indian Competition Act, 2002.

wholly owned subsidiary of Alphabet Inc. (Alphabet), a holding company. Google provides a variety of information technology related services, with a principal focus on search, advertising, operating systems, platforms, and enterprise. Google offers an internet search service. Google's search service is available on websites (such as www.google.com), through partner sites that include Google search technology, and as an application/ app. Google provides advertising solutions to help businesses market and advertise their products. Google's core business activities concern Chrome, Gmail, Google Drive, Google Maps, Android, Google Play, Search, and YouTube. Further, Google India Private Limited ('Google India') is an indirect subsidiary of Google LLC (and an indirect wholly owned subsidiary of Alphabet Inc.).

The Informants have alleged that Google engaged in different kinds of anti-competitive practices, either in the market in which they are dominant or in separate markets, with the aim of cementing Google's dominant position in Online General Web Search Services and Online Video Hosting Platform (through YouTube). In India, Google has captured almost 98 percent of the smartphone market, or 520 million units, as of 2021⁴ In this regard, the Informants essentially made the following allegations:

- i. Google mandates smart phone and tablet manufacturers to exclusively preinstall Google's own applications or services in order to get any part of GMS in smart phones manufactured in/ sold in/ exported to/ marketed in India⁵. Such conduct was claimed to have hindered the development and market access of rival mobile applications or services thereby violating Section 4 read with Section 32 of the Act.
- ii. Google ties or bundles certain Google applications and services (Such as Google Chrome, YouTube, Google Search, *etc.*) distributed on Android devices in India with other Google applications, services and/ or Application Programming Interfaces (APIs) of Google. This conduct illegally prevented the development and market access of rival applications and services in violation of Section 4 read with Section 32 of the Act.
- iii. Google prevents smartphone and tablet manufacturers in India from developing and marketing modified and potentially competing versions of Android (so-called "Android forks") on other devices. This conduct restricted access to innovative smart mobile devices based on alternative, potentially superior versions of the Android operating system in contravention of Section 4 read with Section 32 of the Act.

⁴ Aditya Kalra, "India Antitrust Probe Finds Google Abused Android Dominance, Report Shows," *Reuters*, September 20, 2021, <https://www.reuters.com/technology/india-antitrust-probe-finds-google-abused-android-dominancereportshows-2021-09-18/>

⁵ Section 4 (2) (b) of The Indian Competition Act, 2002.

Based on the material available on record, the Commission, *vide* its order dated 16.04.2019, 16.04.2019, formed a *prima facie* view that Google has contravened various provisions of Section 4 of the Act. Accordingly, the Commission directed the Director General (DG) to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Competition Act.

In the investigation conducted by DG, Google was found to be contravening the provisions of Section 4(2)(a)(i); Section 4(2)(b); Section 4(2)(c); Section 4(2)(d) and Section 4(2)(e) of the Competition Act.

(C) Order of Competition Commission of India⁶:

1. Mandatory pre-installation of entire Google Mobile Suite (GMS) under MADA (with no option to un-install the same) and their prominent placement amounts to imposition of unfair condition on the device manufacturers and thereby in contravention of the provisions of Section 4(2)(a)(i) of the Act. These obligations are also found to be in the nature of supplementary obligations imposed by Google on OEMs and thus, in contravention of Section 4(2)(d) of the Act⁷.
2. Google has perpetuated its dominant position in the online search market resulting in denial of market access for competing search apps in contravention of Section 4(2)(c) of the Act.
3. Google has leveraged its dominant position in the app store market for Android OS to protect its position in online general search in contravention of Section 4(2)(e) of the Act.
4. Google has leveraged its dominant position⁸ in the app store market for Android OS to enter as well as protect its position in non-OS specific web browser market through Google Chrome App and thereby contravened the provisions of Section 4(2)(e) of the Act
5. Accordingly, in terms of the provisions of Section 27 of the Act⁹, the Commission has imposed monetary penalty of Rs. 1337.76 on lines of supreme court case¹⁰.crore as well as issued cease and desist order against Google from indulging in anti-competitive

⁶ *Umar Javeed v. Google LLC* (2019) SCC OnLine CCI 42

⁷ Section 4 (2) (d) of The Indian Competition Act, 2002.

⁸ Section 4 (2) (e) of The Indian Competition Act, 2002.

⁹ Section 27 (b) of The Indian Competition Act, 2002.

¹⁰ *Excel Crop Care Limited v. Competition Commission of India & Anr.*, Civil Appeal No. 2480 of 2014

practices that have been found to be in contravention of the provisions of Section 4 of the Act.

III. CONCLUSION

The Indian economy is consistently on the rise. This economic growth is triggered by competition, as the vigor to better the competitor plays a catalytic role in unlocking the potential of growth in vital areas of the economy. A competitive yet healthy environment facilitates fair competition in the market, thereby not only propelling the national economy but the global financial system as well. The Competition Act 2002 (Competition Act), has been introduced to regulate business practices in India so as to prevent practices having an appreciable adverse effect on competition (AAEC) in India.

In present case, The Competition Commission of India (Commission) has imposed a penalty of Rs. 1337.76 crore on Google for abusing its dominant position in multiple markets in the Android Mobile device ecosystem, apart from issuing cease and desist order. The Commission also directed Google to modify its conduct within a defined timeline.
